The opinion in support of the decision being entered today was <u>not</u> written for publication and is <u>not</u> binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
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<u>Ex parte</u> AKIHIRO KONDA, KAZUO ITO, KAZUNORI AOTUKA,
YUICHI ITOH, AKIRA UCHIYAMA, and TORU TAKEHARA

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Appeal No. 1999-1461
Application No. 08/812,916
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ON BRIEF
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Before KIMLIN, GARRIS, and PAWLIKOWSKI, <u>Administrative Patent Judges</u>.

GARRIS, <u>Administrative Patent Judge</u>.

<u>DECISION ON APPEAL</u>

This is a decision on an appeal from the final rejection of claims 1-9 which are all of the claims pending in the application.

The subject matter on appeal relates to an interior trim material for automotive use comprising a surface layer and a base layer. The surface layer comprises (A) a partially

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crosslinked thermoplastic elastomer of polypropylene resin and

"-olefin copolymer rubber and (B) a polybutene-1 resin which

is added after the formation of the partially crosslinked

thermoplastic elastomer. Further details of this appealed

subject matter are set forth in representative independent

claim 1 which reads as follows:

    1. An interior trim material for automotive use, obtained
by successive injection molding, comprising:

    (I) a surface layer formed of a composition comprising a
mixture of:

        (A) a partially crosslinked thermoplastic elastomer
comprising (a) 10 to 30 parts by weight of a polypropylene
resin and (b) 90 to 70 parts by weight of an "-olefin
copolymer rubber per 100 parts by weight of the total of (a)
and (b), and

        (B) a polybutene-1 resin, said polybutene-1 resin
being added after the formation of the partially crosslinked
thermoplastic elastomer,

wherein the proportion of (A) the thermoplastic elastomer and
(B) the polybutene-1 resin are 95 to 65 parts by weight and 5
to 35 parts by weight, respectively, per 100 parts by weight
of the total of (A) and (B), and

    (II) a base layer formed of a polypropylene resin or a
composition of a polypropylene resin and an inorganic filler.

    The references set forth below are relied upon by the

examiner as evidence of obviousness:

Yonekura et al. (Yonekura)   4,650,830   Mar. 17,
1987

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Hosokawa et al. (Hosokawa)   4,816,313   Mar. 28,
1989

     All of the claims on appeal stand rejected under 35

U.S.C.

§ 103 as being unpatentable over Hosokawa in view of Yonekura.

     We refer to the brief and to the answer for a complete

exposition of the opposing viewpoints expressed by the

appellants and by the examiner concerning the above noted

rejection.

                              OPINION

     This rejection cannot be sustained.

     It is the examiner's basic position that it would have

been obvious to replace the surface layer composition of

Hosokawa with the surface layer composition of Yonekura,

thereby obtaining a material having a surface layer and a base

layer in accordance with the independent claim on appeal.

However, even assuming without deciding that it would have

been obvious to combine the applied reference teachings in the

manner proposed by the examiner, we cannot agree with the

examiner that the resulting combination of Hosokawa's base

layer with Yonekura's surface layer would correspond to the

appellants' independent claim.

In this last mentioned regard, we share the appellants'

position that their claimed surface layer does not encompass a

composition in which the polybutene-1 resin is crosslinked

along with the polypropylene resin and the copolymer rubber in

contrast with the Yonekura surface layer composition in which

all of these ingredients are crosslinked. It is here

appropriate to emphasize that application claims are to be

given their broadest reasonable interpretation consistent with

the specification and that claim language should be read in

light of the specification as it would be interpreted by one

of ordinary skill in the art. In re Sneed, 710 F.2d 1544,

1548, 218 USPQ 385, 388 (Fed. Cir. 1983). When so

interpreted, appealed claim 1 cannot be reasonably considered

to encompass a surface layer composition in which the

polybutene-1 resin of component (B) is crosslinked with the

thermoplastic elastomer of component (A).

According to the examiner, "[i]t would not be

unreasonable to believe that peroxide materials [i.e.,

crosslinking agents used to obtain the appellants' partially

crosslinked thermoplastic elastomer] would be present during

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the addition of the polybutene resin, and cross linking would

continue [to] occur since the polybutene materials are kneaded

together with the partially cross linked elastomer and

polypropylene in the molten state" (answer, page 7). In

essence, it is the examiner's basic contention that some

degree of crosslinking would inherently occur between the

appellants' claimed polybutene-1 resin of component (B) and

the partially crosslinked thermoplastic elastomer of component

(A). However, in relying upon an inherency theory, the

examiner must provide a basis in fact and/or technical

reasoning to reasonably support the determination that the

allegedly inherent characteristic necessarily is produced. Ex

parte Levy, 17 USPQ2d 1461, 1463-1464 (Bd. Pat. App. & Int.

1990). Here, the examiner has proffered no such basis in

support of his contention. Therefore, the contention must be

regarded as unpersuasive. Correspondingly, it was

unreasonable and inappropriate for the examiner to require

that the appellants "come forth with probative evidence that .

. . supports their premise the materials taught by Yonekura .

. . are materially different from those claimed by the

appellants" (answer, page 7).

For the above stated reasons, we cannot sustain the
examiner's section 103 rejection of claims 1-9 as being
unpatentable over Hosokawa in view of Yonekura.

The decision of the examiner is reversed.

<u>REVERSED</u>

Edward C. Kimlin Administrative Patent Judge	)))))
Bradley R. Garris Administrative Patent Judge	) BOARD OF PATENT) APPEALS AND) INTERFERENCES))
Beverly A. Pawlikowski Administrative Patent Judge	))

BRG:tdl

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